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09/899,895	07/05/2001	Illah Nourbakhsh	20191.707	3588

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PERKINS COIE LLP
P.O. BOX 2168
MENLO PARK, CA 94026

EXAMINER

GRAYSAY, TAMARA L

ART UNIT	PAPER NUMBER
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3636

DATE MAILED: 03/01/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/899,895	NOURBAKSH ET AL.	
	Examiner	Art Unit	
	Tamara L. Graysay	3636	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 December 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-42 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-42 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 December 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Preliminary Matters

1. The amendment filed 01 December 2005 has been entered.
2. The amendment filed 01 December 2005 is objected to under 35 U.S.C. 132(a) because it introduces new matter into the disclosure. 35 U.S.C. 132(a) states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows:

The specification fails to support the invention as now claimed including the claim 1 limitation of defining ... wherein the at least one resource includes resources not currently existing. In the reply, applicant has not particularly pointed out where support can be found for the newly added subject matter in the original disclosure. Further, a review of the original disclosure has revealed that the claimed feature is not present in the original disclosure.

Applicant is required to cancel the new matter in the reply to this Office Action.

Drawings

3. The drawings were received on 01 December 2005. These drawings are accepted.

Claim Objections

4. Claim 1 is objected to because of the following informalities:

Line 8: [works] should be work.

Appropriate correction is required.

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Claim Rejections - 35 USC § 112, first paragraph

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

5. Claims 1-15 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

The specification fails to support the invention as now claimed including the limitation of defining ... “wherein the at least one resource includes *resources not currently existing*.” In the reply, applicant has not particularly pointed out where support can be found for the newly added subject matter in the original disclosure. Further, a review of the original disclosure has revealed that the claimed feature is not present in the original disclosure.

Claim Rejections - 35 USC § 112, second paragraph

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 1-15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1: The claim is confusing due to inconsistencies in the claim language. First, “the at least one resource” lacks clear antecedent basis because “at least one resource description” and “a group of resources” are recited in antecedent; however, the added limitation does not clearly relate to or distinguish from the antecedent terms. The claim has been treated as: wherein the group of resources includes resources not currently existing.

Claims 2-15: The features of the dependent claims do not obviate the rejection of claim 1.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1-6, 9, 10, 14-19, 22, 23, 27, 30-33, 36, 37, 41, 42 are rejected under 35 U.S.C. 102(b) based upon a public use or sale of the invention.

a. The Blue Pumpkin I-V information, taken as a whole and in light of the PrimeTime F&S User’s Guide (applicant’s 01 December 2005 reply, Exhibit 1), is found

to be evidence of a public use or on sale bar more than one year prior^{6A} to applicant's filing date in the United States. In the following paragraphs, the examiner directs applicant to some exemplary portions^{6B} of the Blue Pumpkin I-V information and the PrimeTime F&S User's Guide.

b. PrimeTime F&S User's Guide Chapter 6: Working with Histories and Forecasts:

- p.6-6 includes a tip for creating a profile for summer months and a profile for Christmas season as examples of how the software can be used to mirror behavior of your clients at different times of the year. In other words, forecasting client behavior based on seasonal profiles, i.e., satisfying at least one specified criteria.
- p.6-7 through 6-12 describes the steps required for the process of claim 1:
 - o defining at least one resource description (type of agent) comprising a group of resources that have similar characteristics (agents having particular skills), wherein the at least one resource includes resources not currently existing (new agents can be added, e.g., p.5-10 through 5-12), and wherein defining comprises specifying the characteristics (agent availability, call center service goals, etc.), including at least one capability (agent availability) and at least one performance measure (call center service goals);
 - o defining at least one work load (call volume for a service center, e.g., p.6-9) wherein the at least one work load includes work loads not currently existing (the call volume can be changed to a volume that was not previously "existing" as broadly recited, e.g., p.6-9);

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- specifying at least one criteria (e.g., speed to answer) to be satisfied by a staffing plan; and,
 - calculating an effect (forecasting based on the volume forecast and service parameters, PrimeTime projects your agent requirements, e.g., p.6-11) of applying the at least one resource description (type of agent) to the at least one work load (call volume) while satisfying the at least one criteria (speed to answer), wherein the calculated effect includes at least one performance measure (number of agents needed to answer calls at different times of the day and on different days of the week, e.g. p.6-11) for the at least one work load (call volume), and an effective cost per hour (inherent insofar as the number of employees working results always and necessarily equates to cost per hour).
- c. For example, Blue Pumpkin I • 1,17-21 • pp.2,26-30 and Blue Pumpkin II • 1,11-12 • pp.2,28-30, which include “Success Stories;” Blue Pumpkin III • 1,7-11 • pp.2,12-17, which includes “Partners;” Blue Pumpkin IV • 1,9-15 • pp.2,16-27, which includes “Other Success Stories...” and “Cybernetics customers click here for a competitive upgrade offer;” and Blue Pumpkin V • 1-3 • pp.2-6, which includes “January 25...Enterprise 2.0.”
- d. Further, Blue Pumpkin I • 12 • p.17-18, which reads, “The product [PrimeTime software] is available now.” Blue Pumpkin I • 16, •p.24, which reads, “Blue pumpkin will demonstrate ... PrimeTime this week at the ... conference, August 27-28, 1997, in

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Denver, Col.” Blue Pumpkin II • 6 • p.11, which reads workforce management demonstrated by deployment of “proprietary scheduling algorithms.”

e. Regarding efficiency percentage (claim 3), Blue Pumpkin I • 4 • p.5 refers to maximizing effectiveness.

f. Regarding the queue occupancy and estimated cost (claim 4, 17, 31), Blue Pumpkin I • 4 • p.5, includes reference to balancing employee availability with the needs of the call center which relates to the queue of a call center and reducing overstaffing which is inherently tied to estimated cost.

g. Regarding the particular process for iteratively calculating effects (claim 5, 18, 32), Blue Pumpkin I • 7 • p.9 refers to matching service goals and minimizing overstaffing using constraint propagation, simulated annealing and other heuristic search models to schedule optimal solutions incorporating preferences and variables. Blue Pumpkin II • 5 • p.15 center column notes that adjustments to the schedule for the call center are made each time a change is made to an agent schedule. Blue Pumpkin II • 5 • p.14 right column notes that PrimeTime can change agent schedules by making them unavailable or changing break times or shift hours and clicking a re/schedule button will immediately determine a new plan or schedule. Changing shift hours is inherently adding an employee one at a time and changing shift hours again is adding another employee, as broadly claimed in claim 5.

h. Regarding redistributing work and recalculating work load (claim 6, 19, 33), Blue Pumpkin I • 7 • p.9 refers to simulation of any number of queues, calls, agents, and call

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distributions and Blue Pumpkin I • 5 • p.6, “patent pending algorithms” to minimize over or understaffing, try different scenarios.

i. Regarding multiple contact media and skill sets across queues and contact media (claim 14, 41), Blue Pumpkin I • 16 • p.25, discloses that the software enables integration of voice, video, and Internet. Blue Pumpkin II • 5 • p.15 right column notes that Blue Pumpkin disclosed to the public the use of skill-based scheduling. Blue Pumpkin III • 2 • p.3 refers to multiple groups and agent skills as the basis for scheduling. Blue Pumpkin III • 5 • p.9 refers to agents having multiple skills, and planning based on multiple agent skills and ACD queues.

j. Regarding addition additional employees taking into account employees already added across multiple queues and multiple contact media (claim 15, 27, 42), Blue Pumpkin I • 5,7 • pp.6,9, which describes simulation of queues, calls, agents, and call distributions and algorithms to minimize over or understaffing; and Blue Pumpkin I • 16 • p.25, the software enables integration of voice, video, and Internet.

k. Regarding queue volume over time, contact volume, average handling time (AHT), actual service level, and required service level (claim 9, 22, 36), each is an ACD derived statistic. Blue Pumpkin II • 3 • p.4-8 and Blue Pumpkin II • 5 • p.13-14, refers to the data collection of number, time, and length of incoming calls which is imported to the PrimeTime software for analysis in planning and scheduling.

l. Regarding display of more than one staffing plan (claim 10, 23, 37), Blue Pumpkin II • 5 • p.15, for example, the figures display a staffing schedule and staffing requirement comparison on a single display.

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^{7A} As noted in the last Office action, all of the information is more than one year prior to applicant's filing date in the United States. The first page of each Internet Archive search I-V includes a URL listing for the contents of information. All of the information provided was accessed via a "live link" on the Blue Pumpkin web pages via the Internet Archive database. Therefore, each of the pages of information is considered to be available on the date of the Home page. The dates for each Home page is as follows:

- I. January 28, 1998 (33 pages)
- II. April 21, 1998 (30 pages)
- III. February 4, 1999 (17 pages)
- IV. April 29, 1999 (27 pages)
- V. March 2, 2000 (41 pages)

^{7B} Reference to portions of the information is made by a Roman numeral designating the particular Internet Archive Page (I, II, III, IV, or V), item number (1, 2, 3, etc.), and page number of the compiled information.

8. Claims 1-6, 9, 10, 14-19, 22, 23, 27, 28, 30-33, 36, 37, 41, and 42 are rejected under 35 U.S.C. 102(b) as being anticipated by Blue Pumpkin I-V (Internet Archive). The information, taken as a whole, is found to be a public disclosure of the claimed invention more than one year prior^{7A} to applicant's filing date in the United States. In the following paragraphs, the examiner directs applicant to some exemplary portions^{7B} of the Blue Pumpkin I-V information.

- a. Blue Pumpkin I-V discloses long-range planning (PrimeTime, including F&S, Enterprise, Insight, and Skills) for a complex system (I-V, workforce management, e.g., call center) comprising: defining at least one resource description (I-V, call center personnel or agents), as a group having similar characteristics (I • 3-5 • pp.4-6, call center agents having skill sets; Blue Pumpkin I • 6 • p.15, refers to disclosure to the public of skills-based scheduling), including at least one capability (I • 3 • p.4, availability) and at least one performance measure (wrap-up time); defining at least one work load (I • 5 • p.6, staffing level demands); specifying at least one criteria to be satisfied (I • 5 • p.6,

optimal schedule, breaks, shift length, off-phone time); and calculating an effect of applying the resource description to the work load including at least one performance measure and an effective cost per hour (I • 5 • p.6, “patent pending algorithms” to minimize over or understaffing, try different scenarios). This interpretation of Blue Pumpkin is evidenced by the PrimeTime F&S User’s Guide (applicant’s 01 December 2005 reply, Exhibit 1)

- p.6-6 includes a tip for creating a profile for summer months and a profile for Christmas season as examples of how the software can be used to mirror behavior of your clients at different times of the year. In other words, forecasting client behavior based on seasonal profiles, i.e., satisfying at least one specified criteria.
- p.6-7 through 6-12 describes the steps required for the process of claim 1:
 - o defining at least one resource description (type of agent) comprising a group of resources that have similar characteristics (agents having particular skills), wherein the at least one resource includes resources not currently existing (new agents can be added, e.g., p.5-10 through 5-12), and wherein defining comprises specifying the characteristics (agent availability, call center service goals, etc.), including at least one capability (agent availability) and at least one performance measure (call center service goals);
 - o defining at least one work load (call volume for a service center, e.g., p.6-9) wherein the at least one work load includes work loads not currently existing (the call volume can be changed to a volume that was not previously “existing” as broadly recited, e.g., p.6-9);

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- specifying at least one criteria (e.g., speed to answer) to be satisfied by a staffing plan; and,
 - calculating an effect (forecasting based on the volume forecast and service parameters, PrimeTime projects your agent requirements, e.g., p.6-11) of applying the at least one resource description (type of agent) to the at least one work load (call volume) while satisfying the at least one criteria (speed to answer), wherein the calculated effect includes at least one performance measure (number of agents needed to answer calls at different times of the day and on different days of the week, e.g. p.6-11) for the at least one work load (call volume), and an effective cost per hour (inherent insofar as the number of employees working results always and necessarily equates to cost per hour).
- b. Regarding efficiency percentage (claim 3), Blue Pumpkin I • 4 • p.5 refers to maximizing effectiveness.
- c. Regarding the queue occupancy and estimated cost (claim 4, 17, 31), Blue Pumpkin I • 4 • p.5, includes reference to balancing employee availability with the needs of the call center which relates to the queue of a call center and reducing overstaffing which is inherently tied to estimated cost.
- d. Regarding the particular process for iteratively calculating effects (claim 5, 18, 32), Blue Pumpkin I • 7 • p.9 refers to matching service goals and minimizing overstaffing using constraint propagation, simulated annealing and other heuristic search models to schedule optimal solutions incorporating preferences and variables. Blue

Pumpkin II • 5 • p.15 center column notes that adjustments to the schedule for the call center are made each time a change is made to an agent schedule. Blue Pumpkin II • 5 • p.14 right column notes that PrimeTime can change agent schedules by making them unavailable or changing break times or shift hours and clicking a re/schedule button will immediately determine a new plan or schedule. Changing shift hours is inherently adding an employee one at a time and changing shift hours again is adding another employee, as broadly claimed in claim 5.

e. Regarding redistributing work and recalculating work load (claim 6, 19, 33), Blue Pumpkin I • 7 • p.9 refers to simulation of any number of queues, calls, agents, and call distributions and Blue Pumpkin I • 5 • p.6, “patent pending algorithms” to minimize over or understaffing, try different scenarios.

f. Regarding multiple contact media and skill sets across queues and contact media (claim 14, 41), Blue Pumpkin I • 16 • p.25, discloses that the software enables integration of voice, video, and Internet. Blue Pumpkin II • 5 • p.15 right column notes that Blue Pumpkin disclosed to the public the use of skill-based scheduling. Blue Pumpkin III • 2 • p.3 refers to multiple groups and agent skills as the basis for scheduling. Blue Pumpkin III • 5 • p.9 refers to agents having multiple skills, and planning based on multiple agent skills and ACD queues.

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i. Regarding display of more than one staffing plan (claim 10, 23, 37), Blue

Pumpkin II • 5 • p.15, for example, the figures display a staffing schedule and staffing

requirement comparison on a single display.

^{8A} As noted on the attached PTO-892, all of the information is more than one year prior to applicant's filing date in the United States. The first page of each Internet Archive search I-V includes a URL listing for the contents of information. All of the information provided was accessed via a "live link" on the Blue Pumpkin web pages via the Internet Archive database. Therefore, each of the pages of information is considered to be available on the date of the Home page. The dates for each Home page is as follows:

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^{8B} Reference to portions of the information is made by a roman numeral designating the particular Internet Archive Page (I, II, III, IV, or V) and page number of the compiled information.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 7, 20, and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Blue Pumpkin I-V.

Blue Pumpkin I, for example, refers to general costs (non-phone time, breaks, vacations) rather than the particular type of employee or associated costs. Blue Pumpkin II • 5 • p.14, for example, refers to costs associated with headcount for a day. The examiner takes Official notice that the use of wage, shrinkage, and burden as cost factors is well known in the scheduling and planning field of business management and operations research.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Blue Pumpkin I to include shrinkage, burden and wage when determining cost for a particular schedule or scenario in order to follow the well known apples to apples comparison. For example, the cost associated with a full-time and is probably not the same as a part-time employee, a seasoned or experienced employee is probably not the same as a new or inexperienced employee. So the only valuable comparison would take into consideration the shrinkage, burden and wage of each employee.

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10. Claims 8, 13, 21, 26, 35, and 40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Blue Pumpkin I-V.

Blue Pumpkin II • 9 • p.18, reference is made to non-phone activities in a call center. Included are breaks. In the field of customer service, the need for training in the particular company's policy and procedure would also fall into a non-phone activity. The abstract ties a well placed non-phone activity to cost savings (i.e., reduced waste of budget). The examiner takes Official notice that the time and cost for training an employee to the point that the employee is at a level to perform assigned tasks is part of an accurate company budget and workforce schedule. Further, in the case of a call center, as disclosed in Blue Pumpkin II, the cost of training an employee to a level that the employee can perform live (on the phone or other contact media) must be taken into consideration when evaluating costs in order to avoid losing customers, customers hanging-up before being helped. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Blue Pumpkin to include training time and costs for preparing an employee to perform live in a call center, in order to avoid customer service problems, such as losing customers, customer hang-ups, etc.

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11. Claims 11, 12, 24, 25, 38, 39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Blue Pumpkin I-V.

Blue Pumpkin II • 5 • p.15, figure 26 for example, displays that include more than one plan are in a line graph with the two plans shown overlaying each other. The examiner takes Official notice that the use of columns and rows to display data is a well known expedient when comparing figures in the accounting field of endeavor. Moreover, the use of tools to place columns or rows next to each other for ease in comparison are within the level of ordinary skill in the operations research art insofar as the closer the rows or columns are that are being compared, the less likely a mistake will be made when making a visual comparison of the data in a row or column with the data in another row or column. For example, folding paper to place columns or rows next to each other is common, and spreadsheet tools that enable hiding or moving of columns or rows is also well known in the visual display field of endeavor. Applicant is providing such capabilities in order to avoid errors. The level of skill is such that hiding and moving, well known expedients, would have been within the level of ordinary skill in the art.

12. Claims 28 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Blue Pumpkin I-V in view of MPP (Massively Parallel Processing).

MPP teaches the use of computer networks having processors having their own storage device (memory), in order to optimize system performance, are well known in the computer art. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Blue Pumpkin I-V to include storage and access of information through the network, such as suggested by MPP, in order to optimize system performance.

Response to Amendment

13. The affidavit under 37 CFR 1.132 filed 01 December 2005 is insufficient to overcome the rejection of claims 1-42 based upon Blue Pumpkin I-V as set forth in the last Office action because:

a. Item (1): The fact that the affiant is not independent of the inventor is relevant to the weight to be given to the affidavit. In the present case, the affidavit has been given little weight because of the relationship of affiant to the inventive entity.

b. Item (3): The fact that the affiant is not independent of Blue Pumpkin, one of the assignees of the invention, is relevant to the weight to be given to the affidavit. In the present case, the affidavit has been given little weight because of the relationship of affiant to an assignee.

c. Item (3): Affiant presents a job title and duties, including the title Chief Scientist responsible for development of the software that became part of the Prime Time Product. First, the title Chief Scientist provides no facts or inference that a Chief Scientist would be privy to any information related to sales or offerings of a company, i.e., the assignee with which the affiant worked. Second, the duties are self-described as “development of the software that became part of the Prime Time Product,” which does not include any facts as to awareness of all the software, only part of the Prime Time Product. That is to say, affiant has not provided any facts as to knowledge of all of the Prime Time components, only that affiant was aware of some part which affiant was developing.

d. Item (5): The opinion of affiant is limited to “Enterprise” software offerings, not PrimeTime F&S, Insight, or Skills is not persuasive because it lacks an underlying basis,

i.e., factual support. Affiant's familiarity with Enterprise software offerings does not establish a nexus between Enterprise software offerings and the content of the publication as it is applied under the on sale or offer for sale bar because Enterprise is only part of the PrimeTime software package.

e. Item (6): The opinion of affiant includes a declaration that products offered for sale and/or sold by Blue Pumpkin did not include the invention as claimed. The opinion has been given no weight because it lacks an underlying basis, i.e., factual support. Moreover, the opinion is moot because the 01 December 2005 reply includes an amendment to the claims such that the claimed invention at the time affiant made the declaration is not the currently claimed invention.

f. Item (7): The opinion provides no underlying basis, i.e., factual support, for any particular software products of which affiant became aware as Chief Scientist responsible for developing the software that became part of the Prime Time Product. Affiant only makes reference to duties related to development of the software that became part of the Prime Time Products in item (3) and provides no facts to support the opinion that "products disclosed by Blue Pumpkin prior to respective publication dates of Blue Pumpkin I-V, do not disclose the claimed invention. Moreover, the opinion is moot because the 01 December 2005 reply includes an amendment to the claims such that the claimed invention at the time affiant made the declaration is not the currently claimed invention.

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g. Item (8): The opinion is moot because the 01 December 2005 reply includes an amendment to the claims such that the claimed invention at the time affiant made the declaration is not the currently claimed invention.

14. Applicant's response to the Requirement for Information filed 01 December 2005 is appreciated and has been fully considered. The following comments are made in particular to the response to requirement 6 (page 21 of the reply). Requirement 6 read in part "indicate the specific elements in the claimed subject matter" that provide the specified improvements over the prior art.

Applicant has provided information as to alleged improvement(s) over the prior art, however, applicant has not provided a nexus of the alleged improvements to the claimed subject matter, i.e. applicant has not related the improvements to specific claim language. A few examples of the deficiency follow:

- Applicant alleges that "there was no working system for performing long-range planning in skills-based environments" without specifically pointing out where the alleged improvement is claimed. Claim 1 makes no particular claim to "skills-based" as alleged by applicant to be an improvement.
- Applicant alleges that the claimed invention avoids employee-specific data and "ACD-specific" data. Applicant has not specifically pointed out how claim 1, for example, excludes the alleged features.

- Applicant alleges that the claimed invention includes a quality assessment algorithm; however, applicant has not specifically pointed out where in claim 1, the “quality” algorithm is recited.

Response to Arguments

15. Applicant's arguments filed 01 December 2005 have been fully considered but they are not persuasive.

- a. P.16: Applicant argues that the claims are not anticipated by the Blue Pumpkin I-V documents because the documents pertain generally to a software product called PrimeTime which is used to perform shift scheduling. In response, applicant has mischaracterized the documents insofar as the documents include specific reference to planning as recited in the claims and as particularly pointed out above. Moreover, the PrimeTime software product includes forecasting (F&S is forecasting and scheduling) as evidenced by the PrimeTime F&S User's Guide having a 1997, 1998 copyright.
- b. P.16: Applicant argues that Blue Pumpkin I-V lacks long range planning for a complex system. In response, the statement of intended use is not given patentable weight. Even if given weight, the term “long-range” is relative. In call centers, where staff may be part time and work short hours or sporadically during a week, planning a week can be considered long-range.
- c. P.17: Applicant argues that Blue Pumpkin I-V discloses scheduling existing resources to produce an employee schedule which teaches away from long-range

planning. In response, applicant has helped bolster the rejections made above. As noted in paragraph (15)(a), even if the term long-range is given weight, a schedule is planning and in a call center weekly schedules are long-range due to the part time nature of the agents and sporadic work hours.

d. P.17: Applicant argues that Blue Pumpkin I-V has no relation to long-range planning. In response, as noted in paragraph (15)(a), even if the term long-range is given weight, a schedule is planning and in a call center weekly schedules are long-range due to the part time nature of the agents and sporadic work hours.

e. P.17: Applicant argues that many of the Blue Pumpkin I-V articles contain no disclosure or teaching on any method at all. In response, the piecemeal analysis by applicant is not deemed persuasive. It is the Blue Pumpkin I-V reference taken as a whole that anticipate the claimed invention.

f. P.17: Applicant argues that call center personnel are not a resource description. In response, applicant has not specifically referenced applicant's disclosure or any particular definition of the term resource description that may be persuasive in interpreting the claimed feature so as to define over the reference. Broadly, a resource description is nothing more than a label given a resource. As such, the Blue Pumpkin I-V label for call center personnel is a resource description.

g. P.17: Applicant argues that staffing level demands are not a work load. In response, applicant has not specifically referenced applicant's disclosure or any particular definition of the term resource description that may be persuasive in interpreting the claimed feature so as to define over the reference. Broadly, a work load is nothing more

than a level of work performed, whether expected or actual. As such, the Blue Pumpkin I-V's staffing level demands are a work load.

h. P.17: Applicant argues that generating a schedule has nothing to do with calculating the effect of applying a resource description to a work load. In response, that is exactly how the Blue Pumpkin schedule is determined: by calculating the personnel requirements (time and number) based on the agents and the level of work performed by the personnel.

i. P.17: Applicant argues that the Blue Pumpkin cited passage does not teach the limitation of long-range planning. In response, see (15)(d) above.

j. P.18: Applicant agrees that Blue Pumpkin I-V discloses a system; however, applicant argues that Blue Pumpkin I-V does not contain the claimed elements. In response, the terms used by applicant are not explicitly in the reference, however, the rejection above directs applicant's attention to the interpretation given the reference and the elements or feature thereof. While an applicant can be one's own lexicographer, such lexicography will not preclude the broadest reasonable interpretation of the claims, such as those presented above with regard to claims 16 and its dependent claims.

k. P.18: Applicant agrees that Blue Pumpkin I-V discloses a medium containing computer instructions; however, applicant argues that Blue Pumpkin I-V does not include the claim elements and is therefore not evidence of a public use or on sale bar. In response, the terms used by applicant are not explicitly in the reference, however, the rejection above directs applicant's attention to the interpretation given the reference and the elements or feature thereof. While an applicant can be one's own lexicographer, such

lexicography will not preclude the broadest reasonable interpretation of the claims, such as those presented above with regard to claims 16 and its dependent claims.

l. P.18: Applicant argues that the affidavit of Illah Nourbakhsh under 37 CFR 1.132 overcomes the on sale bar. See paragraph (13) above for the response to this argument.

m. P.19: Applicant traverses the rejections under 103(a) arguing that the references teach away from the claimed invention, relying on the arguments made with regard to the independent claims. In response, applicant has not provided any particular argument with regard to each of the dependent claims. Therefore, no additional response is necessary.

Conclusion

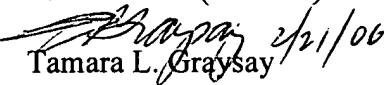
16. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tamara L. Graysay whose telephone number is 571-272-6728. The examiner can normally be reached on Mon - Fri from 8:30am to 5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Cuomo, can be reached on 571-272-6856. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Tamara L. Graysay
Examiner
Art Unit 3636